EFFECTIVE DATE

SEC. 7. This Act and the amendments made by this Act shall take effect on October 1, 1984, except that section 6 shall take effect on the date of enactment of this Act.

By Mr. GOLDWATER (for himself, Mr. FORD and Mr. PRESSLER)

S. 2282. A bill to amend the Communications Act of 1934 to limit ownership of national television networks not otherwise subject to section 310 of the act and certain large cable television systems by foreign entities or aliens, and for other purposes; to the Committee on Commerce, Science and Transportation.

RESTRICTING FOREIGN CONTROL OF CABLE SYSTEMS AND NEW MAJOR TELEVISION NETWORKS

● Mr. GOLDWATER. Mr. President, I am introducing, today, for myself and Senators FORD and PRESSLER, legislation to limit foreign control of new major U.S. television networks and large cable television systems. There is nothing new in the proposal. The measure simply brings existing alien ownership restrictions of communications law up to date with modern technology. The basic need for the bill is to prevent foreigners from buying up and gaining control over the primary source of information which is available to and used by the American people.

Section 310(b) of the Communications Act of 1934 presently restricts foreign ownership of and participation in broadcast licenses of individual radio and television stations. Section 310(b) is but one of several statutes that restrict foreign ownership in critical U.S. industries.

Present law prohibits indirect as well as direct foreign ownership of broadcast stations. The extent of the prohibition depends upon the amount of foreign participation. Individual foreigners are barred from holding licenses. Corporate licensees are limited to 20-percent alien ownership of capital stock and are prohibited from having a foreign citizen as either an officer or a director. Holding companies are allowed as much as 25-percent foreign ownership and 25-percent foreign participation on the board of directors. In addition, the Federal Communications Commission is granted discretion to approve more foreign stock ownership, board of directors' representation and officers in the case of holding companies.

Current law does not specifically apply to cable system operators, nor would it apply to any major national television network which does not hold a station license. These are two major loopholes in the law which must be closed up.

National television networks increasingly provide the primary source of news and information to the vast majority of U.S. citizens. Newspapers and magazines, books and other printed materials, come in as a distant second as the source of day-in and day-out information received by most people. While it is true that the three major national television networks are presently all covered by the foreign ownership restrictions of section 310(b), since they have financial interests in or ownership of individual broadcast licenses, a new major network could arise that does not hold any license or the present corporations could change their organization by spinning off their interests in station licenses.

Also, due to the growing expansion of cable television service throughout the United States, the majority of American people now have the opportunity to receive cable service and 38 percent of American homes are subscribers. It may take several more years for cable to reach its true potential, but all telecommunications studies predict a growing share of the home video market for cable systems. Although I realize that in 1975 and 1980, the FCC declined to adopt a rule against foreign ownership of cable television systems, I feel strongly that cable television deserves no less protection from foreign influence than broadcast television or radio.

Mr. President, it should be noted that no other country in the world allows the degree of foreign ownership in its broadcast and cable television companies that is possible in the United States. The proposed law merely extends existing policy to new video technologies.

The bill we are introducing will add a new section 333 to the Communications Act of 1934. It will make it unlawful for foreign persons to directly or indirectly operate or control a major national television network not subject to current law. To avoid redundancy, only major national television networks, which are not subject to section 310(b) of the act as owners of interests in television stations, will be brought within the new alien ownership restrictions. ABC, CBS, and NBC, as now organized, will not be affected because two of the networks are already covered by internal corporate limits on foreign influence and all are covered by section 310(b).

The new section 333 will also establish foreign ownership restrictions that are directly applicable to large cable television systems.

Unlike the present section 310(b)(4), section 333 will not give the FCC discretion to allow undue alien ownership in parent companies of these networks and cable systems. The Commission will have discretion only as to allowing an alien to be an officer.

Mr. President, I want to make it clear that any ownership arrangements now existing, which would otherwise be prohibited under the bill, are grandfathered to avoid possible industry disruption. For example, existing Canadian and other foreign ownership of U.S. cable systems would not be affected by the bill. Specifically, any foreign-owned cable operator otherwise covered by the bill could continue to expand service under existing franchises or submit bids for new franchises if the bidding process had already commenced. Also, the present ownership structure of any television network otherwise covered by section 333, but permissible under the current section 310(b), will be grandfathered. The effective date of the grandfather clause is today, February 9, the date of introduction of the bill.

Mr. President, I have mentioned that the bill will apply only to large cable television systems. This is provided for in section 333. Paragraph (b)(2) contains a definition of cable operators which limits the bill to a cable operator who directly or indirectly operates or controls one or more cable television systems which, in the aggregate, serve no less than 250,000 subscribers.

The definition section would allow foreign investment in cable operations where the potential for influence is minimal, but it would reach situations where the degree of potential, foreign influence is sizable.

This subject is not new to the Senate. Last June 14, we passed S. 66 the cable bill, which contains a prov sion, section 605(b), directly applicab to foreign ownership. The section cal on the FCC to identify situations i which foreign investors can buy into U.S. cable companies, but U.S. investors do not enjoy reciprocity. The U.S. Trade Representative is supposed to act on such barriers, when they are uncovered.

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Also, on August 10, 1982, the Senate Commerce Committee reported a cable bill, S. 2172, which I coauthored, that included a foreign ownership restriction that is even tougher than section 333 of the bill I am introducing today. Section 605(b) of S. 2172 would have directed the FCC to adopt rules creating an absolute ban on foreign ownership or control of cable television systems in the United States by the nationals of any country to the extent that ownership of cable systems was prohibited in such foreign country. Because many countries do not allow U.S. investment in communications enterprises to the extent allowed in this country, S. 2172 could have created a complete barrier to much foreign investment in the cable television industry in the United States.

This bill, on the other hand, is much more narrow in scope. It allows outright foreign ownership and control of cable systems serving an aggregate of 250,000 subscribers. Moreover, the present bill provides for grandfathering of current foreign ownership in excess of those limits and allows reasonable levels of foreign investment in the nationally oriented cable companies while establishing fair limits to prevent undue influence.

Finally, the bill amends section 310(b)(4) of the Communications Act by removing discretion from the FCC to permit foreign ownership interests

interfere with the recruitment of volunteers into the NHSC, which is the preferable means.

Third, under this legislation, the Secretary of HHS is directed to transmit to the Congress a long-term staffing plan for the NHSC based on a total corps size of 2,100 or such lesser number that is consistent with the demonstrated health manpower needs of health manpower shortage areas. As the number of health manpower shortage areas shrink in response to NHSC program placements and market forces, the corps needs such a versatile long-range plan to continue its mission of providing health personnel to communities with the greatest need and demand for health care and which have been unable to attract providers of primary care services.

Two technical amendments are also included in the bill. First, starting with individuals who sign their first NHSC scholarship contract in fiscal year 1985, the Secretary of Health and Human Services is given the flexibility to select for these individuals which residency and advanced clinical training program they may participate in while deferring their scholarship obligation. Second, current law contains two authorities for loans to corps members to enter private practice in a health manpower shortage area. The bill combines these authorities into one loan program available to all corps members (scholarship obligated and volunteers) who will enter into or are currently in private practice in a health manpower shortage area. These loans will assist eligible individuals in the purchase of equipment and the renovation of facilities used in providing health services and will help to promote the National Health Service Corps private practice option program. The private practice option encourages individuals to serve at their own financial risk in underserved areas during their period of obligated service. The option also provides incentives for corps members to develop good relationships with the community they serve and to stay in that community for longer periods of time.

Taken altogether, this bill gives the NHSC program the flexibility it needs to continue to operate at a level consistent with the needs of health manpower shortage areas. I urge the support of all my colleagues for this worthwile goal.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD at the conclusion of my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, AS FOLLOWS:

S. 2281

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Health Service Corps Amendments of 1984".

REFERENCE

SEC. 2. Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

AUTHORIZATIONS OF APPROPRIATIONS

SEC. 3. (a) Section 338(a) is amended by striking out "and" after "1983;" and by inserting before the period a semicolon and "$90,000,000 for the fiscal year ending September 30, 1985; $85,000,000 for the fiscal year ending September 30, 1986; and $85,000,000 for the fiscal year ending September 30, 1987".

(b) Section 338F(a) is amended by striking out the last sentence and inserting in lieu thereof the following: "For the fiscal year ending September 30, 1985, and each of the two succeeding fiscal years, there are authorized to be appropriated such sums as may be necessary to make 150 new scholarship awards in accordance with section 338A (d) in such fiscal year and to continue to make scholarship awards to students who have entered into written contracts under the Scholarship Program before October 1, 1987.".

OBLIGATED SERVICE

SEC. 4. Section 338B(b)(5) is amended to read as follows:

"(5)(A) With respect to an individual receiving a degree from a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, or pharmacy, the date referred to in paragraphs (1) through (4) shall be the date upon which the individual completes the training required for such degree, except that—

"(i) at the request of such an individual with whom the Secretary has entered into a contract under section 338A prior to October 1, 1984, the Secretary shall defer such date until the end of the period of time (not to exceed the number of years specified in subparagraph (B) or such greater period as the Secretary, consistent with the needs of the Corps, may authorize) required for the individual to complete an internship, residency, or other advanced clinical training; and

"(ii) at the request of such an individual with whom the Secretary has entered into contract under section 338A on or after October 1, 1984, the Secretary may defer such date in accordance with the provisions of clause (i).

"(B)(i) With respect to an individual receiving a degree from a school of medicine, osteopathy, or dentistry, the number of years referred to in subparagraph (A) (i) shall be three years.

"(ii) With respect to an individual receiving a degree from a school of veterinary medicine, optometry, or pharmacy, the number of years referred to in subparagraph (A)(i) shall be one year.

"(C) No period of internship, residency, or other advanced clinical training shall be counted toward satisfying a period of obligated service under this subpart.

"(D) With respect to an individual receiving a degree from an institution other than a school referred to in subparagraph (A), the date referred to in paragraphs (1) through (4) shall be the date upon which the individual completes his academic training leading to such degree.".

SPECIAL LOANS FOR CORPS MEMBERS TO ENTER PRIVATE PRACTICE

SEC. 5. (a) Subsections (a) and (b) of section 338F are amended to read as follows:

"(a) The Secretary may, out of appropriations authorized under section 338, make one loan to a Corps member who has agreed in writing—

"(1) to engage in the private full-time clinical practice of his profession in a health manpower shortage area (designated under section 332) for a period of not less than two years which—

"(A) in the case of a Corps member who is required to complete a period of obligated service under this subpart, begins not later than one year after the date on which such individual completes such period of obligated service; and

"(B) in the case of an individual who is not required to complete a period of obligated service under this subpart, begins at such time as the Secretary considers appropriate;

"(2) to conduct such practice in accordance with the provisions of section 338C (b)(1); and

"(3) to such additional conditions as the Secretary may require to carry out the purposes of this section; to assist such individual in meeting the costs of beginning the practice of such individual's profession in accordance with such agreement, including the costs of acquiring equipment and renovating facilities for use in providing health services, and of hiring nurses and other personnel to assist in providing health services. Such loan may not be used for the purchase or construction of any building.

"(b) The amount of a loan under subsection (a) to an individual shall not exceed $25,000.".

(b) Subsection (c) of such section is amended by striking out "grant or" in the first sentence.

(c) Subsection (d)(1) of such section is amended by striking out "this section," and inserting in lieu thereof "this section (as in effect prior to October 1, 1984),".

(d) Section 338C(e) is amended by striking out paragraph (1) and by striking out "(2)" before "Upon".

PERSONNEL PLAN FOR THE NATIONAL HEALTH SERVICE CORPS

SEC. 6. (a) By October 1, 1985, the Secretary of Health and Human Services shall prepare and transmit to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives a plan for the recruitment, employment, and retention of personnel for the National Health Service Corps which assures that—

(1) the Corps will continue to improve the delivery of health services in health manpower shortage areas (as designated by the Secretary under section 332 of the Public Health Service Act) during fiscal year 1988 through 1990; and

(2) during each such fiscal year, the total number of Corps members shall not exceed 2,100 or such lesser number as the Secretary considers necessary to serve the demonstrated needs of health manpower shortage areas.

(b) The plan required by subsection (a) shall include alternative proposals for the recruitment, employment, and retention of personnel for the National Health Service Corps, estimates of the amounts that would be required to carry out each such proposal during each of the fiscal years with which the plan is concerned, and such recommendations for legislation and administrative action as the Secretary considers appropriate.

(c) The Secretary shall prepare the plan required by subsection (a) in consultation with State governments, voluntary organizations, and organizations representing health professionals.

in certain situations, where the Commission may find that the public interest will be served thereby. The Commission can now permit alien officeships, directorships, and ownership interests in parent companies of licensees. The proposed amendment will retain this flexibility only as to officerships. Again, the bill contains a grandfather clause.

Mr. President, I hope there will be early and favorable action on the bill to protect against improper foreign influence in the primary source of information received by the American public.

Mr. President, I ask the text of the bill and a brief analysis may appear in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SECTION 1. That Part I of Title III of the Communications Act of 1934 is amended by adding at the end thereof the following new section:

"LIMITATION OF ALIEN CONTROL OF NATIONAL TELEVISION NETWORKS NOT OTHERWISE SUBJECT TO SECTION 310 AND CABLE TELEVISION SYSTEMS

"SEC. 333. (a) It shall be unlawful for—

"(1) any foreign government or the representative of any foreign government;

"(2) any alien or the representative of any alien;

"(3) any corporation organized under the laws of any foreign government or representatives thereof;

"(4) any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record by aliens or their representatives, or by a foreign government or representatives thereof, or by any corporation organized under the laws of a foreign country;

"(5) any corporation directly of indirectly controlled by any other corporation (i) of which more than one-fourth of the directors are aliens; or (ii) of which more than one-fourth of the capital stock is owned of record by aliens or their representatives, or by a foreign government or representatives thereof, or by any corporation organized under the laws of a foreign country; or (iii) of which any officer is an alien, if the Commission finds that the public interest will be served by prohibiting such alien officership;

to directly or indirectly operate or control a national television network not otherwise subject to Section 310 of the Act or a cable television multiple system operator.

"(b) For purposes of this section:

"(1) The term 'national television network not otherwise subject to Section 310 of the Act,' means a person (including persons under common control) which offers an interconnected television program service on a regular basis for twenty-five (25) or more hours per week to at least twenty-five (25) affiliated television broadcast stations in ten (10) or more states and which is not otherwise subject to the alien ownership restrictions of Section 310 of the Act.

"(2) The term 'cable television multiple system operator' means a person (including persons under common control) which directly or indirectly operates or controls one or more cable television systems which, in the aggregate, serve no less than 250,000 subscribers.

"(3) The term 'cable television system' means a facility or combination of facilities which consist of a primary control center used to receive and retransmit, or to originate broadband telecommunications service over one or more coaxial cables, or other closed transmission media, from the primary control center to a point of reception at the premises of a cable subscriber.

"(c) The provisions of this section shall not apply to any officership, directorship, ownership, operation or control which would otherwise be prohibited by this section if such interest existed as of February 9, 1984; provided that such interest is not increased or transferred after February 9, 1984, to any individual or entity prohibited by this section from holding or exercising such interest, except that the cable television multiple system operator grandfathered under this subsection may expand service under existing franchises and may submit bids for new franchises if the bidding process has commenced as of February 9, 1984.

SEC. 2. That section 310(b)(4) of the Communications Act of 1934 is amended in its entirety to read as follows:

"(4) any corporation directly or indirectly controlled by any other corporation (i) of which more than one-fourth of the directors are aliens; or (ii) of which more than one-fourth of the capital stock is owned of record by aliens or their representatives, or by a foreign government or representatives thereof, or by any corporation organized under the laws of a foreign country or representatives thereof; or (iii) of which any officer is an alien, if the Commission finds that the public interest will be served by prohibiting such alien officership;"

SEC. 3. That section 310 of the Communications Act of 1934 is amended by adding at the end thereof the following new subsection:

"(e) The provisions of subsection 310(b)(4) shall not apply to any officership, directorship, ownership, operation or control which would otherwise be prohibited by this section if such interest existed as of February 9, 1984, and was permissible under subsection 310(b)(4) prior to February 9, 1984, provided that such interest is not increased or transferred after February 9, 1984, to any individual or entity prohibited by this section from holding or exercising such interest."

ANALYSIS OF THE BILL

Section 333 extends alien ownership restrictions presently applicable to certain broadcast station licenses to ownership of major national television networks not otherwise subject to Section 310 of the Act and large cable television multiple system operators (MSOs).

The definition of "national television network not otherwise subject to Section 310 of the Act" is intended to exclude the major television networks—ABC, CBS and NBC—now subject to Section 310 of the Act. None of the three major networks as now organized would fall within the parameters of new Section 333.

Due to the expansion of cable television service throughout the United States, citizens are also becoming more exposed to, and reliant on, information transmitted over cable systems. Cable television deserves no less protection from foreign influence than broadcast television or radio.

Exempted from the applicability of Section 333 are interests existing prior to the date of the bill's introduction and which were permissible under the current section 310(b)(4). This "grandfather" clause is intended to prevent undue disruption in the industry by adoption of the bill. For example, existing Canadian and other foreign ownership of U.S. cable systems would not be disturbed. However, the bill provides that "grandfathered" interests may not be increased by new bids or new applications not now pending, and first filed after the date of introduction. For example, an MSO may have elected prior to that date an officer who is an alien. Under Section 333, the officer may be retained; but he or she may not become an officer of another MSO, nor may additional or substitute alien officers be elected, after the date of introduction. Similarly, any foreign-owned MSO otherwise covered by the bill could continue to expand service under existing franchises or submit bids for new franchises if the bidding process had already commenced. "Grandfathered" levels of alien-owned capital stock shall not be increased after the date of introduction.

It is recognized that the degree of potential alien influence is dependent upon the number of citizens reached by a given foreign-owned cable operator. Section 33 therefore applies to MSOs serving more than 250,000 subscribers, the approximate number of households reached by a small-market television station. This restriction of applicability is intended to facilitiate detection of prohibited interests and to permit foreign investment in operators where the potential for influence is minimal.

Finally, the bill amends Section 310(b)(4) of the Communications Act. That Section now authorizes the Federal Communications Commission to permit alien officerships, directorships and ownership interests in parent companies of licensees above those specified by the provision if the public interest will be served thereby. It is intended that the Commission's discretion to permit interests greater than those specified in Section 310(b)(4) be retained only as to officerships. Section 310(e) is added as a "grandfather" clause to exempt from the provisions of amended Section 310(b)(4) officerships, directorships and levels of ownership obtained or applied for prior to the date of the bill's introduction.●

By Mr. MATHIAS:

S. 2283. A bill to provide for the public financing of general elections for the U.S. Senate, and for other purposes; to the Committee on Rules and Administration.

SENATE ELECTION CAMPAIGN FUND ACT OF 1984

Mr. MATHIAS. Mr. President, I am introducing today a bill to provide partial public funding of Senate general election campaigns. It is similar to legislation that I have supported in the past and reflects my belief that public funding of congressional campaigns is essential to complete the task of campaign finance reform begun by Congress over a decade ago.

I introduce this bill because I continue to believe that the public financing of election campaigns offers the best means to remedy the ills of the current system. What I find troubling about the way we now finance elections is not simply the high-water mark set by recent campaign spending. It is the way in which the flood of campaign dollars has itself altered the process. Candidates and officeholders alike increasingly have had to devote themselves not to the interests of the voters but to the pursuit of campaign contributions.

Money alone does not win a campaign. But few campaigns today are won without it. The price tag of a successful Senate campaign rose 70 percent from 1980 to 1982, according to figures released by the Federal Election Commission. Overall spending in congressional campaigns rose from $239 million in 1980 to $342 million in 1982. If this rise continues, campaign spending in another few years will be off the charts.

What is the real cost of this vastly inflated role of money in the system? It is in the numbers of prospective candidates—talented and qualified men and women—who will choose not to run because of the difficulty in raising the kind of money it takes to run a competitive campaign. Ultimately the price is a system in which the qualification for higher office is a good direct mail list, a personal fortune, or an ability to appeal to narrow interests to bankroll a campaign, a system in which a candidate whose primary currency is a supply of good ideas will be unable to compete.

I am not suggesting and my bill does not propose that there is no role for individuals, political parties, or even the sometimes villified political action committee in funding Federal campaigns. The bill would not limit their participation, except as it limits overall campaign spending. Those who choose to participate by giving directly to a candidate, or through a party, or PAC, should remain free to do so.

Candidates and officeholders, however, should also be given some measure of freedom from the incessant demands of campaign fundraising and freed from the resultant public perception that big money and special interests dominate campaign financing.

The bill I am introducing would provide a system of matching public funds to qualified Senate candidates in the general election campaign. Most importantly, it would limit overall campaign spending in the general election to $200,000 plus 16 cents times the voting age population of the State in which the election is held. To establish eligibility, a candidate would be required to raise the lesser of 20 percent of the applicable spending limit or $200,000. In raising this threshold amount and in qualifying for subsequent matching funds, only contributions of $100 or less from individuals, at least 80 percent of whom were residents of the candidate's State, would be taken into account. Finally, candidates who accepted public funding could not spend more than $35,000 of personal funds on the campaign.

I ask that the bill, a section-by-section analysis, and a brief summary be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2283

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Senate Election Campaign Fund Act of 1984".

SEC. 2. The Federal Election Campaign Act of 1971 is amended by adding at the end thereof the following new title:

"TITLE V—PUBLIC FINANCING OF SENATE GENERAL ELECTIONS CAMPAIGN

"DEFINITIONS

"SEC. 501. For purposes of this title—

"(1) the definitions set forth in section 301 of this Act apply to this title;

"(2) 'general election' means any regularly scheduled or special election held for the purpose of electing a candidate to the United States Senate;

"(3) 'eligible candidate' means a candidate who is eligible, under section 502, for payments under this title;

"(4) 'account' means the Senate General Election Campaign Account maintained by the Secretary of the Treasury in the Presidential Election Campaign Fund established by section 906(a) of the Internal Revenue Code of 1954; and

"(5) 'authorized committee' means, with respect to any candidate for election to the United States Senate, any political committee which is authorized in writing by such candidate to accept contributions or make expenditures on behalf of such candidate to further the election of such candidate.

"ELIGIBILITY FOR PAYMENTS

"SEC. 502. (a) To be eligible to receive payments under this title, a candidate shall in writing agree—

"(1) to obtain and to furnish to the Commission any evidence it may request about his campaign expenditures and contributions;

"(2) to keep and to furnish to the Commission any records, books, and other information it may request; and

"(3) to an audit and examination by the Commission under section 507 and to pay any amounts required under section 507.

"(b) To be eligible to receive payments under this title, a candidate shall certify to the Commission that—

"(1) the candidate and his authorized committees will not make campaign expenditures greater than the limitations in section 315(b)(3) of this Act;

"(2) no contributions will be accepted by the candidate or his authorized committees in violation of section 315(a) of this Act;

"(3) the candidate is seeking election to the United States Senate, and he and his authorized committees have received contributions for that campaign in a total amount of not less than the smaller of—

"(A) 20 percent of the amount of expenditures the candidate may make in connection with the campaign under section 320(b)(3) of this Act, or

"(B) $200,000; and

"(4) at least two candidates have qualified for the election ballot for election to the same seat in the United States Senate under the law of the State involved.

"(c) Agreements, certifications, and declarations required by this section shall be filed at a time determined by the Commission but shall be submitted prior to a candidate's request for payments under section 505 for consideration in conjunction with the Commission's certification process.

"ENTITLEMENT TO PAYMENTS

"SEC. 503. (a) Every candidate who meets the eligibility requirements in section 502 is entitled to payments for use in his general election campaign in an amount equal to the amount of contributions he and his authorized committees receive for that campaign.

"(b) A candidate entitled to payments under subsection (a) shall be entitled to—

"(1) an initial payment in an amount equal to the contributions certified under section 502(b)(3); and

"(2) additional payments to be paid in—

"(A) multiples of $10,000 under section 506, if, with respect to each such payment, the eligible candidate and his authorized committees have received contributions aggregating $10,000; and

"(B) a final payment under section 506 (designated as such by the candidate involved) of the balance of the entitlement of the candidate under this section.

"(c) In determining the amount of contributions received by a candidate and his authorized committees for the purposes of subsection (a) of this section and section 502(b)(3)—

"(1) no contribution received by the candidate or any of his authorized committees as a subscription, loan, advance, deposit, or as a contribution of products or services, shall be taken into account;

"(2) no contribution received from a political committee or any other organization shall be taken into account;

"(3) no contribution received from any individual shall be taken into account to the extent that such contribution exceeds $100 when added to the amount of all other contributions made by that individual to or for the benefit of such candidate in connection with his general election campaign;

"(4) no contribution received from any individual who resides in a State other than the State in which the election is held shall be taken into account to the extent that such contribution when added to all other contributions received from such individuals exceeds 20 percent of the aggregate of contributions otherwise taken into account;

"(5) no contribution (A) which is received before September 1 of the year immediately preceding the year in which any general election is held and (B) which is not maintained in a separate account until the date on which such candidate qualifies under the law of the appropriate State for election, shall be taken into account; and no contribution maintained in such a separate account shall be used to make any expenditure until the date on which the candidate qualifies under the law of the appropriate State for election to the Senate; and

"(6) no contribution received after the date on which the election is held shall be taken into account.

"(d) Notwithstanding the provisions of subsection (a), no candidate is entitled to the payment of any amount under this section which, when added to the total amount of contributions received by him and his authorized committees and any other payments made to him under this title for his general election campaign, exceeds the amount of the expenditures limitation applicable to such candidate for that campaign under section 315(b)(3)(A) of this Act.

"WAIVER OF OVERALL EXPENDITURE LIMITATION; ADDITIONAL PUBLIC FINANCING FOR CERTAIN CANDIDATES

"SEC. 504. (a)(1) Not later than the date on which a candidate qualifies under the law of the appropriate State for election to the Senate of the United States or 90 days before the date of any general election, whichever is earlier, each candidate for election to the Senate of the United States shall file with the Commission a declaration of whether he intends to make expenditures in excess of the limitations on expenditures under section 315(b)(3) of this Act.

"(2) Not later than 60 days before the date of such general election, each candi-

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SPECIAL

February 28, 1984

LEGISLATIVE REFERRAL MEMORANDUM

Legislative Liaison Officer

TO: Department of Justice
United States Information Agency
General Services Administration
Central Intelligence Agency
National Security Council

"no objection"
2/29/84
per phone call
& J. Murr/OMB
ROD

SUBJECT: National Security Agency testimony on H.R. 4620, the "Federal Telecommunications Privacy Act."

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than 12:00 Noon, Wednesday, February 29, 1984.

Direct your questions to me at (395-4870).

James C. Murr for
Assistant Director for
Legislative Reference

Enclosures

cc: Adrian Curtis
Frank Reeder
Jim Jordan
Fred Fielding
Mike Uhlmann
Arnie Donahue

H.R. 4620, 98th Congress

STATEMENT

OF

ROBERT E. RICH
DEPUTY DIRECTOR
NATIONAL SECURITY AGENCY

BEFORE

THE

COMMITTEE ON GOVERNMENT OPERATIONS
SUBCOMMITTEE ON LEGISLATION AND NATIONAL SECURITY
HOUSE OF REPRESENTATIVES

CONCERNING

H.R. 4620
THE FEDERAL TELECOMMUNICATIONS PRIVACY ACT OF 1984

ON

MARCH 1, 1984

Mr. Chairman:

I am the Deputy Director of the National Security Agency (NSA). With me today is the General Counsel of the National Security Agency, Mr. Jon T. Anderson. We are glad to have the opportunity this morning to express our views on H.R. 4620 on behalf of the Agency.

Before discussing the bill, I wish to make a few comments which will place our concerns in perspective. The National Security Agency's principal missions, signals intelligence and communications security, necessarily involve the monitoring and recording of communications. Signals intelligence (SIGINT) is directed at foreign communications to produce foreign intelligence and would only infrequently be affected by the bill.

The communications security mission focuses on United States Government telecommunications and would be generally affected by H.R. 4620. In addition, the Agency has administrative requirements to record communications, for example our command and security centers must record certain communications. Such monitoring and recording as now occurs is extensively regulated by statutes, executive order, or Department of Defense procedures. Regulation in this area has evolved over many years, and we believe it effectively protects the rights of Americans while permitting the accomplishment of vital national security functions. The prospect of additional regulation for these essential activities is a daunting one,

particularly so when the ostensible target of H.R. 4620 is a type of recording which is flatly prohibited within the Department of Defense unless all parties are informed of and consent to the recording. Our comments on the bill are designed to alert the Committee to consequences for NSA which we assume are unintended and to suggest solutions which would enable us to perform our missions under the existing regulatory framework.

Before proceeding, I must advise the Committee that a more detailed elaboration of the points made in this testimony could involve classified information. I will do my best to be responsive in this forum but ask the Committee's indulgence if a classified response would be required.

Subsection (a) of the new section that would be added to the Federal Property and Administrative Services Act of 1949 would prohibit federal officers and employees from recording or listening-in upon any conversation conducted on a federal telecommunications system or conducted on any other telecommunications system if the conversation is between a federal officer or employee and any other person and involves the conduct of Government business.

Subsection (b) permits--that is, exempts from the prohibition in subsection (a)--the recording of, or listening-in upon, a conversation without the consent of any party to it when the

recording or listening-in is authorized under the Omnibus Crime Control and Safe Streets Act of 1968 or the Foreign Intelligence Surveillance Act.

Subsection (c) permits the recording of or listening-in upon a conversation with consent of one party to it when the recording or listening-in is performed (1) for law enforcement purposes, (2) for counterintelligence purposes, (3) for public safety purposes, (4) by a handicapped employee as a tool necessary to his or her performance of official duties, or (5) for service monitoring purposes.

Subsection (d) permits the recording of or listening-in upon a conversation with the consent of all parties to it conducted in cases of telephone conferences, secretarial recording, and other acceptable administrative practices under strict supervisory controls to eliminate possible abuses.

Two principal missions of the Agency are affected by this bill--the signals intelligence (SIGINT) mission and the communications security (COMSEC) mission. Included in the SIGINT mission is the interception and processing of foreign communications to produce intelligence information for the President, his cabinet members, and other national policymakers. All but a very small part of the SIGINT mission is outside the scope of this bill because the communications systems that are monitored are other

than those defined in subsection (a) of this bill, and only in very rare instances is it even possible that one of the communicants could be an officer or employee referred to in subsection (a). A part of NSA's SIGINT mission that could involve systems and persons within the scope of this bill is conducted under the Foreign Intelligence Surveillance Act in accordance with court orders or guidelines mandated by the Act, and is, therefore, exempt under subsection (b) from the Act's prohibition. The exemption in subsection (b) is clearly a necessary and reasonable one. We applaud your foresight in including it. However other parts of our SIGINT mission are conducted against communications outside the scope of FISA; that part of our SIGINT mission is regulated by guidelines mandated by E. O. 12333, and consistent with guidelines in effect since 1976. The bill makes no provision for those activities. Consequently, the exempting provisions need to be augmented in ways which we described in our Director's letter of February 28, 1984, a copy of which is attached.

The second of the Agency's primary missions that would be affected by your proposed statute is communications security (COMSEC). COMSEC means protective measures taken to deny unauthorized persons information derived from telecommunications of the U. S. Government, including certain contractors of the Government, related to national security and to ensure the authenticity of such communications. Such protection results from the application of security measures (including cryptographic

security, transmission security, emissions security) to electrical systems generating, handling, processing, or using national security or national security related information. It also includes the application of physical security measures to COMSEC information or materials. Systematic examinations of telecommunications are carried out to determine the adequacy of COMSEC measures, to identify COMSEC deficiencies, to provide data from which to predict the effectiveness of proposed COMSEC measures, and to confirm the adequacy of such measures after implementation. COMSEC monitoring is an essential part of such examinations and is conducted pursuant to detailed guidelines approved by the Attorney General. COMSEC monitoring is the act of listening to, copying, or recording transmissions of Executive Branch official telecommunications, including the communications of certain contractors, to provide technical material for analysis in order to determine the degree of cryptographic or transmission security being provided to these transmissions. This monitoring is only infrequently conducted and notice is required to be provided to persons utilizing communications systems subject to such monitoring. COMSEC monitoring must be exempted from the prohibitions in the bill. None of the exemptions included in H.R. 4620 as introduced covers COMSEC monitoring. The Director, NSA's letter previously mentioned indicates the form we believe an exemption should take so as to permit the continuation of this important activity.

As my statement indicates, NSA's concerns about H.R. 4620 relate to the ways in which Agency functions would be adversely affected that, we believe, are not intended by the bill's drafter. Those concerns are the highly technical areas that are described in the attached letter, with some specific suggestions for required amendments to H.R. 4620. We would of course be glad to aid however we can in ascertaining precise text of changes. Meanwhile, we will be pleased to respond to any questions that you have at this time.

Attachment
a/s

change in GSA
re: Pricing data
-- GSA defers
to indiv. dept

OK

NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20755

Serial: N0323
28 February 1984

The Honorable Jack Brooks
Chairman, Committee on Government Operations
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This is in response to your letter of February 6, 1984, requesting a report and comments on H.R. 4620, the "Federal Telecommunications Privacy Act of 1984," and your letter of February 15, 1984, requesting my appearance before hearings on H.R. 4620 to be held on March 1, 1984, by the Subcommittee on Legislation and National Security of your Committee. I regret that I am unable to attend the hearing on H.R. 4620. Previously scheduled hearings are being held by the Permanent Select Committee on Intelligence on March 1, 1984, on the fiscal year 1985 budget, and my presence is required there by that Committee during both morning and afternoon sessions. I hope that the appearance in my stead at the hearing on H.R. 4620 of Mr. Robert E. Rich, Deputy Director, National Security Agency, will be satisfactory.

Summary of the Bill

H.R. 4620 would prohibit federal officers and employees from recording or listening-in upon any conversation conducted on a federal telecommunications system or conducted on any other telecommunications system if the conversation is between a federal officer or employee and any other person and involves the conduct of Government business.

Exempted under subsection (b) would be the recording of, or listening-in upon, a conversation without the consent of any party to it when the recording or listening is authorized under the Omnibus Crime Control and Safe Streets Act of 1968 or the Foreign Intelligence Surveillance Act.

Exempted under subsection (c) would be the recording of, or listening-in upon, a conversation with the consent of one party to it when the recording or listening-in is performed (1) for law enforcement purposes, (2) for counterintelligence purposes, (3) for public safety purposes, (4) by a handicapped employee as a tool necessary to his or her performance of official duties, or (5) for service monitoring purposes.

Recording of or listening-in upon telephone conversations pursuant to subsection (c)(3), (4), and (5) must have prior approval by the agency head or designee of written determinations specifying the operational need for listening-in or recording

conversations, the system and location where it is to be performed, the telephone numbers and recorders involved, and operating times and the expiration date and justifying the use. Service monitoring under subsection(c)(5) could be conducted only by designated personnel after positive action to inform callers of the monitoring and labeling of telephone instruments subject to the monitoring. Only the minimum number of calls necessary to compare a statistically valid sample could be monitored. No data identifying the caller could be recorded by the monitoring party, and no information obtained by the monitoring could be used against the calling party.

Under subsection (d) recording of or listening-in upon a telephone conversation with the consent of all parties to it could be conducted in cases of telephone conferences, secretarial recording, and other acceptable administrative practices under strict supervisory controls to eliminate possible abuses.

Current copies and subsequent changes of agency documentation, determinations, policies, and procedures supporting operations pursuant to subsections (c)(3), (4), or (5) would be required to be forwarded before the operational date for the General Services Administration (GSA). The GSA would be accountable for information concerning operations under subsection (c)(3), (4), and (5), and for periodically reviewing listening-in programs with agencies to ensure compliance with federal property management regulations. The GSA would be charged with obtaining compliance with the enacted H.R. 4620 if an agency failed to document its devices in accordance with the Act.

Subsection (g) provides that any recording or transcription of a conversation made under (or in violation of) the Act would be a record within a system of records under the Privacy Act of 1974 as to each party to the conversation. Subsection (h) would include any such recording or transcription within the protection of a criminal statute prohibiting the concealment, removal, mutilation, obliteration, falsification, or destruction of records filed with officials of U. S. courts or other public office.

Effects on NSA

Set forth below are the effects that this bill would have on the activities of the National Security Agency (NSA). In reviewing these effects, you should keep in mind two key points. First, the bill proposes to legislate in an exceedingly complex area, i.e., electronic surveillance. H.R. 4620 would be at least the fourth statute that affects monitoring of telecommunications (see also 18 U.S.C. §§2510 et seq., 47 U.S.C. §605, and 50 U.S.C. §1801 et seq.). The three existing statutes are not well integrated with each other, and against this background H.R. 4620 inevitably adds complexity. Without more time to consult with

all interested parties in the Executive Branch, I cannot be certain that the full impact of H.R. 4620 on NSA is yet recognized. Thus, this Agency may be required to supplement these comments. Second, while the scope of H.R. 4620 as regards the activities of NSA is potentially quite broad, the actual incidence of some effects may be very infrequent. For example, in the conduct of its SIGINT mission NSA rarely, if ever, overhears the telecommunication of a federal employee discussing Government business. Nevertheless, it is a possibility and could occur accidentally in the course of an overseas surveillance which is not conducted under the Foreign Intelligence Surveillance Act.

Two primary missions of the National Security Agency (NSA) would be affected by your proposed statute. Significant aspects of the Agency's signals intelligence (SIGINT) mission are governed by the Foreign Intelligence Surveillance Act of 1978 (FISA). By virtue of subsection (b), that mission would be unaffected by the Act, unless recordings made under FISA authority would be deemed to be "made under...this Act" and therefore deemed records in a system of records for Privacy Act purposes and records for purposes of the criminal statute cited in subsection (h).

Automatically declaring a SIGINT recording as a Privacy Act record regardless of how the recording is maintained and retrieved would be inappropriate for several reasons. First, statutory minimization procedures require deletion of personal identifiers in many cases. Second, it would be impossible to comply with Privacy Act requirements without creating an index--a process that would be very costly and counterproductive to privacy concerns. Finally, disclosure of the fact alone that a telephone conversation of a particular person had been intercepted and processed for SIGINT purposes by NSA could jeopardize SIGINT sources and methods and would be a fact that the Agency could neither confirm nor deny. The adverse consequences of declaring all recordings made under (or in violation of) this Act to be Privacy Act records also apply, in varying degrees, to the other Agency functions discussed in this letter.

NSA conducts a number of SIGINT activities at the request of federal officials directed against their communications for counterterrorism purposes. Since counterintelligence is not defined, it appears necessary to amend (c)(2) by adding "or counterterrorism" in line 11, page 3, after counterintelligence.

NSA also conducts other SIGINT activities that either intentionally or accidentally could monitor or record communications within the scope of Section 113(a)(2). For example, the Agency or its associated military components may monitor U.S. military exercise communications. Because of the nature of exercises, it is rarely possible to secure consent of any party, let alone all parties to a communication. As mentioned previously,

it is also possible that in the course of SIGINT activities conducted outside the scope of FISA incidental overhears are possible. Finally, NSA, or other intelligence agencies, could be authorized by the Attorney General pursuant to E.O. 12333 to conduct electronic surveillance of a federal employee abroad, i.e., outside the scope of FISA. Such a surveillance could acquire communications within the scope of Section 113(a)(2). These problems could be avoided by adding a new subparagraph to Section 113(b):

> "(3) Without the consent of any party to a conversation, the recording of, or listening-in upon, such conversation may be conducted notwithstanding subsection (a) if such recording or listening is conducted against communications outside the scope of Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. 2510 et seq.) or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), is conducted by an agency in the Intelligence Community, and is conducted pursuant to guidelines approved by the Attorney General."

The second of the Agency's primary missions that would be affected by your proposed statute is communications security (COMSEC). COMSEC means protective measures taken to deny unauthorized persons information derived from telecommunications of the U. S. Government, including certain contractors of the Government, related to national security and to ensure the authenticity of such communications. Such protection results from the application of security measures (including crypto security, transmission security, emissions security) to electrical systems generating, handling, processing, or using national security or national security related information. It also includes the application of physical security measures to COMSEC information or materials. Systematic examinations of telecommunications are carried out to determine the adequacy of COMSEC measures, to identify COMSEC deficiencies, to provide data from which to predict the effectiveness of proposed COMSEC measures, and to confirm the adequacy of such measures after implementation. COMSEC monitoring is an essential part of such examinations, and is conducted pursuant to detailed guidelines approved by the Attorney General. COMSEC monitoring is the act of listening to, copying, or recording transmissions of Executive Branch official telecommunications, including the communications of certain contractors, to provide technical material for analysis in order to determine the degree of cryptographic or transmission security being provided to these transmissions. This monitoring is only infrequently conducted and notice is required to be provided to persons utilizing communications systems subject to such monitoring. COMSEC monitoring must be exempted from the prohibitions in your bill. None of the exemptions included in H.R. 4620 as introduced covers COMSEC monitoring. I propose that the following paragraph be added under subsection (c):

"(6) The recording or listening-in is performed by or under the authorization of the Executive Agent for Communications Security for the purpose of communications security (COMSEC) monitoring to obtain material for analysis in order to determine the adequacy of COMSEC measures, to identify COMSEC deficiencies, to provide data from which to predict the effectiveness of proposed COMSEC measures, and to confirm the adequacy of such measures after implementation. Such monitoring shall be conducted pursuant to guidelines approved by the Attorney General."

NSA is also authorized to monitor and record communications to train its personnel and to test its equipment. To protect private citizens from such activities a preferred target for such monitoring is Government telecommunications. While existing procedures also state a preference for consensual monitoring, it is rarely possible to assure that all parties to these communications consent. While the FISA authorizes monitoring for these purposes the scope of FISA is much narrower than the scope of H.R. 4620. FISA only affects monitoring which constitutes electronic surveillance as defined in 50 U.S.C. 1801(f)(1)-(4), i.e., in general terms, electronic surveillance in the United States. H.R. 4620 would also affect monitoring which occurred abroad. To avoid the unintended impact of the unequal scope of these statutes, I propose the following paragraph be added under subsection (b) after inserting "(1)" after "(b)":

"(2) Without the consent of any party to a conversation the recording or listening-in may be performed notwithstanding subsection (a) by a federal agency to train personnel in the use of electronic surveillance equipment or to test the capability of electronic equipment. The Attorney General shall approve procedures for such recording or listening-in consistent with the criteria and limitations of 50.U.S.C. 1805(f)(1) and (3)."

Recording or listening-in is performed by NSA employees for public safety and service monitoring purposes on telecommunications systems used at NSA to support SIGINT and COMSEC operations. The recordings resulting from such monitoring often contain highly classified information or information that, even if unclassified, may be withheld from disclosure by the Agency under section 6 of the National Security Agency Act of 1959, as amended. 50 U.S.C §402 (note). Subsection (e)(2) of H.R. 4620 should be amended by adding after "subsection (c)" on line 8, page 6, the following clause:

"except such operations conducted to support the activities of the National Security Agency."

Representatives of the National Security Agency would, of course, be pleased to meet with you to discuss the concerns set forth above.

Sincerely,

LINCOLN D. FAURER
Lieutenant General, USAF
Director, NSA/Chief, CSS

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98TH CONGRESS
1ST SESSION

S. 1917

To provide that the Federal Communications Commission shall not regulate the content of certain communications.

IN THE SENATE OF THE UNITED STATES

OCTOBER 3, 1983

Mr. PACKWOOD introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To provide that the Federal Communications Commission shall not regulate the content of certain communications.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Freedom of Expression Act of 1983".

FINDINGS

SEC. 2. The Congress finds that—

(1) free and unregulated communications media are essential to our democratic society;

(2) there no longer is a scarcity of outlets for electronic communications;

(3) the electronic media should be accorded the same treatment as the printed press;

(4) regulation of the content of information transmitted by the electronic media infringes upon the First Amendment rights of those media;

(5) regulation of the content of information transmitted by the electronic media chills the editorial discretion of those media and causes self-censorship, thereby dampening the vigor and limiting the variety of public debate; and

(6) eliminating regulation of the content of information transmitted by the electronic media will provide the most effective protection for the right of the public to receive suitable access to a variety of ideas and experiences.

PURPOSES

SEC. 3. The purpose of this Act is to extend to the electronic media the full protection of the First Amendment guarantees of free speech and free press.

AMENDMENTS TO THE COMMUNICATIONS ACT OF 1934

SEC. 4. The Communications Act of 1934 is amended—

(1) in section 312(a) by—

(A) adding "or" immediately at the end of paragraph (5);

(B) striking out the semicolon and "or" in paragraph (6) and inserting in lieu thereof a period; and

(C) striking out paragraph (7);

(2) by repealing section 315;

(3) by amending section 326 to read as follows:

"SEC. 326. Nothing in this Act shall be construed to give the Commission the power to—

"(1) censor any communication;

"(2) review the content of any completed communication; or

"(3) promulgate any regulation or fix any condition which shall interfere with the right of free speech, including any requirement of an opportunity to be afforded for the presentation of any view on an issue.".

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1800-8803

Victor Toensing, *Chief Counsel*
Senate Select Committee on Intelligence
224-1700

Ernie —

Sen. Goldwater wanted me to check with you that the enclosed bill does not affect national security — (regardless of its merits or ~~lack~~ thereof!)

Thanks
Vicki

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